

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte STANISLAW R. BURZYNSKI

Application No. 09/603,320

MAILED

OCT 29 2002

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on October 2, 2002. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

An Examiner's Answer (Paper No. 11) was entered June 5, 2002. Appellant responded in a Reply Brief (Paper No. 12) entered August 5, 2002. The Examiner then responded with a paper entitled "Notice of Entry of Reply Brief" (Paper No. 13) on August 23, 2002. This paper, however, included rebuttals to appellant's Reply Brief, and thus will be treated as a Supplemental Examiner's Answer.

Application No. 09/603,320

In accordance with the revision effective December 1, 1997, Title 37, Code of Federal Regulations § 1.193 states:

(b)(1) . . . The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief.

In view of this revision, the examiner must do one of two things: (1) reopen prosecution in order to respond to the Reply Brief (Paper No. 12), or (2) vacate the original Notice of Entry of Reply Brief (Paper No. 13) and issue a new Notice of Entry of Reply Brief without the rebuttal paragraphs.

Accordingly, it is

ORDERED that the application is remanded to the Examiner for consideration and proper response to Paper No. 12, and for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

A handwritten signature in black ink, appearing to read 'Dale M. Shaw', is written over a horizontal line.

Dale M. Shaw
Program and Resource Administrator
(703) 308-9797

Application No. 09/603,320

Matthew L. Madsen
Howrey, Simon, Arnold & White, LLP
750 Bering Drive
Houston, TX 77057-2198

dem

RA-03-0036